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7 *Board of Regents of the Nevada System of*
Higher Education, on behalf of the University of
8 *Nevada, Las Vegas, Karen West, Philip C. Walter*
9 *and Ronald R. Lemon*

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 MONAMIE GHATAK,
13
14 Plaintiff,

15 vs.

16 THE STATE OF NEVADA ex rel. BOARD
OF REGENTS OF NEVADA SYSTEM OF
17 HIGHER EDUCATION, on behalf of the
UNIVERSITY OF NEVADA, LAS
18 VEGAS; KAREN WEST, individually and
as Dean of the School of Dental Medicine of
the University of Nevada, Las Vegas;
19 PHILIP C. WALTER, individually and as
Director of the Advanced Education Program
20 in Pediatric Dentistry at the University of
Nevada, Las Vegas; RONALD R. LEMON,
21 individually and as Associate Dean for
Advanced Education Programs at the
22 University of Nevada, Las Vegas; and DOES
I-XX, inclusive,
23 Defendants.

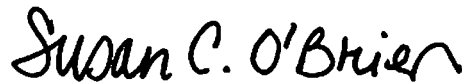
CASE NO.: 2:12-cv-00609-LRH-RJJ

**DEFENDANT'S REPLY TO
PLAINTIFF'S OPPOSITION TO
COMPEL PLAINTIFF MONAMIE
GHATAK'S DEPOSITION AND
DEPOSITION OF JOYDIP ROY ON AN
ORDER SHORTENING TIME AND
REQUEST FOR ATTORNEYS' FEES
AND SANCTIONS**

24
25 Defendants, the State of Nevada ex rel. its Board of Regents of the Nevada System of
26 Higher Education, on behalf of the University of Nevada, Las Vegas ("UNLV" or "University"),
27 Karen West, individually and as Dean of UNLV School of Dental Medicine ("SDM"), Philip C.
28 Walter, individually and as Director of the Advanced Education Program in Pediatric Dentistry of

1 UNLV SDM, and Ronald R. Lemon, individually and as Associate Dean for Advanced Education
 2 Programs at UNLV SDM (collectively referred to as "University") by and through counsel, Elda
 3 M. Sidhu, General Counsel and Susan Carrasco O'Brien, Assistant General Counsel, respectfully
 4 submit this Reply to Plaintiff's Opposition to Defendants' Emergency Motion to Compel Plaintiff
 5 Monamie Ghatak's Deposition and the Deposition of JoyDip Roy on an Order Shortening Time
 6 and Request for Attorneys' Fees and Sanctions. This Reply is based upon Local Rule 6-1, Local
 7 Rule 7-5 and Fed. R. Civ. P. 37, the attached Memorandum of Points and Authorities, as well as
 8 other papers, pleadings and documents on file herein.

9 DATED: January 11, 2013.

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 16 *Attorney for Defendants*

17
 18 I.

19 SUMMARY

20 Setting of December Depositions

21 In her Reply, Plaintiff does not dispute that Plaintiff and Mr. Roy were duly served on
 22 November 29, 2012, for depositions on December 18 and 19, 2012. (Affidavit of Susan C.
 23 O'Brien, Exhibit A). Plaintiff does not dispute that Plaintiff and Mr. Roy were duly served at the
 24 addresses listed in Plaintiff's Initial Disclosures and Plaintiff's First Supplement to Initial
 25 Disclosures, eighteen (18) and nineteen (19) days before the scheduled depositions. *Id.* Plaintiff

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1 and Mr. JoyDip Roy's address is listed as:

2 c/o Jason Bach, Esq.
3 and Michael Mascarello, Esq.
4 The Bach Law Firm, LLC
Las Vegas, Nevada 89148

5 *Id.*

6 It is undisputed that the legal counsel's office for Plaintiff and Mr. Roy did not
7 immediately contact Defendants regarding any concerns or issues with the Notice of Deposition
8 and Subpoena served on November 29, 2012. *Id.* Ten days after hand-delivered service, an
9 assistant from Mr. Bach's office, called and spoke with an assistant in the UNLV Office of
10 General Counsel and conveyed Mr. Bach was unavailable on the dates set for the depositions. *Id.*
11 Sandra, on behalf of Mr. Bach, offered the dates of January 8 & 9 as alternative dates for the
12 taking of the depositions. *Id.* The first effort by Plaintiff's attorney to communicate with
13 Defendants' attorney was December 17, 2012, in an email sent after hours at 7:25 p.m., stating that
14 neither Plaintiff nor her husband intended to appear at the duly noticed and subpoenaed
15 depositions. *Id.* Information about Plaintiff and Mr. Roy being out of state was first mentioned
16 by Mr. Mascarello on December 18, 2012. *Id.*

17 It was not until December 18, 2012, the day of Plaintiff's duly noticed deposition, that
18 Plaintiff filed a Motion for Protective Order (Court Document #21) Motion for Protective Order
19 and to Quash Subpoena (Court Document #22) to prevent the taking of Plaintiff's deposition and
20 that of Mr. Roy, despite having been served on November 29, 2012.

21 **Setting of January Depositions**

22 In her Reply, Plaintiff does not dispute that Plaintiff and Mr. Roy were duly noticed and
23 served on December 21, 2012, for depositions on January 8 and 9, 2013, seventeen (17) and
24 eighteen (18) days before the scheduled depositions. *Id.* Plaintiff now alleges that Mr. Roy lives
25 in Virginia. *Id.* However, Plaintiff cannot dispute that Plaintiff and Mr. Roy were served at Mr.
26 Bach's address, which is the address listed by Plaintiff in her Initial Disclosures and First
27 Supplement to Initial Disclosures. *Id.*
28

1 Plaintiff does not dispute that no effort to communicate with Defendants' counsel was
 2 made until the day before the scheduled deposition near the end of the day, specifically, late
 3 January 7, 2013, in an email sent by Mr. Bach at 4:49 p.m.¹ *Id.* The email stated that neither
 4 Plaintiff nor Mr. Roy would appear at the scheduled depositions of January 8 and 9, 2013. *Id.*

5 In relation to both instances above, the reasons for Plaintiff and Mr. Roy's failure to attend
 6 their duly noticed depositions has evolved from an attorney is not available, they are not available
 7 and now to their wanting not to be deposed until after the ENE. *Id.*

8 II.

9 ARGUMENT

10 A. THE PARTIES ARE REQUIRED TO PARTICIPATE IN DISCOVERY AS THERE 11 HAS BEEN NO STAY OF DISCOVERY

12 Plaintiff is essentially asking this Court for a retroactive stay of discovery. There is an
 13 outstanding Discovery Plan and Scheduling Order providing for a discovery cut-off of February
 14 18, 2013 (Court Document #17). Pursuant to Local Rule 26-1, the parties are required to
 15 participate in discovery.
 16

17 There has not been a stay of discovery. It is well established that a party seeking a stay of
 18 discovery carries a heavy burden of making a strong showing why discovery should be denied.
 19 *Turner v. Broadcasting System, Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997) (citing
 20 *Blakenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975)). "Neither the desire of the parties
 21 to participate in the ENE process nor [a] pending summary judgment is sufficient reason to stay
 22 discovery." *Zhou v. Foster*, 2011 U.S. Dist. LEXIS 104242, 2 (D. Nev. 2011).

23 In this case, there has not been any showing why Defendants should be prevented from
 24 taking the deposition of Plaintiff and Mr. Roy, especially in light of the fact that the Court set an
 25

26 ¹ In his Declaration Counsel states that on December 21, 2012 his office communicated with Plaintiff and husband
 27 regarding their availability on January 8 and January 9. There is no mention that Plaintiff's Counsel tried to
 28 communicate with Defendants nor does it mention that Plaintiff was unavailable. Exhibit 1, Declaration of Jason
 Bach, attached Errata to Plaintiff's Opposition to Defendant's Emergency Motion to Compel Plaintiff Monamie
 Ghatak's deposition and Deposition of JoyDip Roy on an Order Shortening Time (Document #32).

1 ENE, for which Defendants wish to make adequate preparation and the fact that the discovery cut-
 2 off is February 18, 2013. Accordingly, Defendants request that the discovery process be
 3 permitted to continue and for an Order compelling the depositions of Plaintiff and Mr. Roy prior to
 4 January 17, 2013.

5 Additionally, Defendants seek payment of expenses and attorneys' fees pursuant to Fed. R.
 6 Civ. P. 37(a)(5) incurred in relation to the scheduling of the depositions on December 19 and 20,
 7 2012 and January 8 and 9, 2013.

8 **B. PROFESSIONAL COURTESY**

9 In her Reply, Plaintiff implicitly refers to professional courtesy between attorneys as the
 10 general rule. Defendants' counsel agrees that the norm is for professional courtesy to be extended
 11 between attorneys. There is no question that counsel for both sides have litigated numerous cases
 12 together. These prior dealings establish a course of conduct that has resulted in an incremental
 13 erosion of that norm, such that the extension of professional courtesy no longer applies to
 14 Plaintiff's counsel.²

15 Defendants complied with the law and the rules. Defendants provided reasonable notice
 16 with regard to the scheduling of depositions as required by Fed. R. Civ. P. 30(b), which guides the
 17 notice requirements for setting the depositions and provides that:
 18

19
 20 (1) *Notice in General.* A party who wants to depose a person by oral
 21 questions **must give reasonable written notice to every other**
 22 **party.** The notice must state the time and place of the deposition
 23 and, if known, the deponent's name and address. If the name is
 unknown, the notice must provide a general description sufficient to
 identify the person or the particular class or group to which the
 person belongs. (Emphasis added).

24 While Fed. R. Civ. P. 30(b) is applicable in this matter, Nev. R. Civ. P. 30(b)(1) is instructive as to
 25 what is a "reasonable written notice." Nev. R. Civ. P. 30(b)(1) provides that reasonable notice for

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27
 28 ² *Maffeo v. NSHE et al.*, 461 Fed. Appx. 629 (9th Cir. 2011). Pursuant to Fed. R. App. P. 32.1 a copy is attached as Exhibit B.

1 purpose of setting a deposition is not less than fifteen (15) days. Specifically, it states:

2 (1) A party desiring to take the deposition of any person upon oral
3 examination shall give reasonable notice, **not less than 15 days**, in
4 writing to every other party to the action. The notice shall state the
5 time and place for taking the deposition and the name and address of
6 each person to be examined, if known, and, if the name is not
7 known, a general description sufficient to identify the person or the
8 particular class or group to which the person belongs. If a subpoena
duces tecum is to be served on the person to be examined, the
designation of the materials to be produced as set forth in the
subpoena shall be attached to or included in the notice. (Emphasis
added).

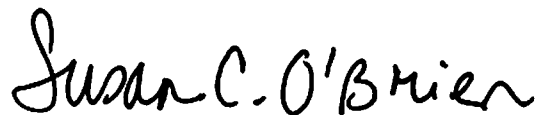
9 As indicated above, Defendants' served a Notice of Deposition of Plaintiff, and Subpoena
10 for the Deposition of JoyDip Roy on Mr. Bach's office more than fifteen days prior to the date of
11 their depositions in December 2012 and January 2013. Accordingly, reasonable notice was
12 provided.

13 III.

14 CONCLUSION

15 Based upon the foregoing, Defendants respectfully request Defendants' Emergency Motion
16 to Compel Plaintiff's Deposition and the Deposition of JoyDip Roy, on an Order Shortening Time,
17 and Motion for Attorneys' Fees, Costs and Sanctions be granted, as well as such other and further
18 relief as this Court deems just and proper.

19 DATED: January 11, 2013.

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21
22 ELDA M. SIDHU
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23 Nevada Bar No. 7799
SUSAN CARRASCO O'BRIEN
24 Assistant General Counsel
Nevada Bar No. 8396
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26 Las Vegas, Nevada 89154-1085
27 *Attorney for the State of Nevada ex rel. its*
Board of Regents of the Nevada System of
28 *Higher Education, on behalf of the University*
of Nevada, Las Vegas and Karen West

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), and Section IV of District of Nevada Electronic Filing Procedures, I certify that I am an employee of the University of Nevada, Las Vegas, and that the following document, **DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO COMPEL PLAINTIFF MONAMIE GHATAK'S DEPOSITION AND DEPOSITION OF JOYDIP ROY ON AN ORDER SHORTENING TIME AND REQUEST FOR ATTORNEYS' FEES AND SANCTIONS** was served via electronic service on the date shown below:

Jason J. Bach, Esq.
THE BACH LAW FIRM, LLC
6053 S. Fort Apache Road # 130
Las Vegas, Nevada 89148

DATED: January 11, 2013.



Office of General Counsel
UNIVERSITY OF NEVADA, LAS VEGAS